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From:

Sent: Friday, February 10, 2012 3:11:44 PM

To:

Cc:

Subject: Returns Made by Agents (1.6012-1(a)(5))

Summary:

A representative signed a joint return only on the primary taxpayer's line. The representative is also the secondary taxpayer's POA on file. Does representative have to sign on both lines for the return to be valid?

Service position is that a joint return must be signed by both husband and wife. See Treas. Reg. 1.6013-1(a)(2). Under this rationale, we believe that both primary and secondary taxpayer's signature line must be signed, for a valid joint return election to be made. The return may be valid as to the primary taxpayer, but the joint filing election may be invalid. Check to determine whether this is a situation where a return may be signed by an agent under Treas. Reg. 1.6012-1(a)(5), i.e., disease or injury of the principal, continual absence from the United States for 60 days, or permission from the Service. Also, under regulation 601.504(a)(6), the representative may only sign a return if the requirements of regulation 1.6012-1(a)(5) apply, and the Form 2848 specifically authorizes the representative to sign a return.

In certain situations, a spouse may sign for an incapacitated spouse, without a power of attorney if oral consent is given, see Treas. Reg. 1.6012-1(a)(5).

Please contact me if I can be of further assistance.